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SUBJECT: APRIL 11 REVISITED: VENEZUELAN SUPREME COURT
OVERRIDES ITSELF

Classified By: POLITICAL COUNSELOR ABELARDO A. ARIAS FOR REASONS 1.4 (d
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Summary

[1](#)1. (C) The Constitutional Chamber of the Venezuelan Supreme Court March 11 annulled the 2002 decision which ruled that the events of April 2002 constituted a power vacuum and not a coup. The decision now allows the Attorney General to bring four high ranking military officers to trial on charges of military rebellion in connection with the events. Independent judicial experts said the ruling undermines the integrity of the justice system, while Vice President Jose Vicente Rangel said the decision defended the historical truth. Attorney General Isaias Rodriguez said that a new investigation would now begin, possibly extending to other officers. End Summary.

Constitutional Chamber Trumps Plenary

[1](#)2. (U) The Constitutional Chamber of Venezuela's Supreme Court (TSJ) March 11 annulled the TSJ's 2002 decision which prevented the prosecution of four high ranking military officers accused of military rebellion in 2002. In 2002 Attorney General Isaias Rodriguez had tried to open an investigation for military rebellion against the commanders of the four service branches for their role in the events of April 2002. The Attorney General requested the TSJ permission to open the investigation, as required by the constitution (ante-juicio de merito). On August 14 2002, the TSJ denied permission, ruling that the prosecution did not

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have evidence to support the charge of military rebellion. In its decision, the TSJ pointed out that the officers had ordered their soldiers not to leave their barracks, and so no military coup had taken place. This decision effectively protected all the military officers involved in the April events from being prosecuted.

[1](#)3. (U) Following an invitation from then TSJ President Ivan Rincon, Rodriguez filed a request for revision of the decision with the Constitutional Chamber of the TSJ on December 2, 2004. The Constitutional Chamber, in a decision written by former Electoral Council President Francisco Carrasquero, has now ruled that the decision was invalid because Justice Antonio Garcia Garcia recused Justices Omar Mora and Juan Rafael Perdomo. According to the Constitutional Chamber, Garcia should have allowed then TSJ President Ivan Rincon to decide on the recusal. The Constitutional Chamber ruled that this error was a "gross" violation of the rights of the accused to be tried by their "natural judges." The Court also ordered any future prosecution requests be heard in the lower courts, arguing that the officers were now retired and so had no special privileges. The Constitutional Chamber did not take a position on whether the events of April 2002 constituted a coup.

Political, not Judicial

[1](#)4. (C) Jesus Maria Casal Dean of the Andres Bello Catholic University law school calls the ruling political rather than juridical. He told poloff March 14 it was absurd to annul a ruling which benefited the accused, using the argument that the rights of the accused had been violated. He said that juridically there is no way to argue that the decision would have been different if Mora and Perdomo had heard the case, since they are assumed to be impartial. Politically, he said, it is known that Mora and Perdomo are loyal to President Chavez and would have ruled in favor of the prosecution (one of their alternates ruled against the prosecution). This was in fact decisive in changing the sense of the decision.

15. (C) Casal said it is possible that Garcia did violate the regulations, but noted that Mora and Perdomo's objections at the time were rejected by the TSJ itself. According to Casal the damage to the concept of double jeopardy, and the dangerous precedent of a single chamber of the Court overruling a decision of the entire body were far more

serious than the alleged infraction. Casal questioned whether any court could now grant the accused a fair trial, citing the recent suspension or a tenured judge without pay by the TSJ Judicial Commission, which Casal asserted had sent a clear message to the lower courts that the political lines of the revolution must not be crossed.

16. (C) Jose Luis Tamayo, defense lawyer for one of the four officers, told poloff March 15 that the Constitutional Chamber had used an absurd technical issue to overturn the case. He asserted that the passing of the Organic Law of the TSJ, which explicitly gave the Constitutional Chamber the

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right to review plenary Court decisions now seemed to have been designed specifically to reverse the 2002 decision. He said that the 2002 decision had taught Chavez that the Court was a source of real power, and that he did not control it. Now, according to Tamayo, Chavez controls the judicial system completely, counting at least 25 of the justices as unconditional supporters.

Crass Ignorance

17. (C) Opposition leaders and defense lawyers criticized the decision in the press. Penal expert Alberto Arteaga said in El Universal March 14 the decision revealed a "crass ignorance of the law", saying judges cannot use defendants rights against the interests of the accused. He said the decision was not juridical, but rather about the defense of the official truth about April 11. Opposition leaders were quoted in the press March 15 saying the decision undermined the rule of law in Venezuela. Leopoldo Puchi, Secretary General of the Movement Toward Socialism party, Eduardo Fernandez, President of the COPEI party, and Jesus Mendez Quijada, a leader of the Democratic Action party, all condemned the decision and the exposure of the defendants to double jeopardy. They all stressed that any case could now be subject to review, even if the parts involved believed the case was definitively resolved by the Supreme Court.

Historical Truth

18. (U) President Chavez told reporters on March 13 that the decision showed the "deepening of democracy and the consolidation of the institutions." Vice President Jose Vicente Rangel released a statement March 11, saying the Constitutional Chamber's decision "vindicated the historical truth, and the rule of law." Rangel called the original decision an insult to the Venezuelan people, democracy and liberty. TSJ President Omar Mora said the protection against revising definitive sentences was relative, if the sentences were marked by errors from the beginning. Attorney General Rodriguez told reporters the decision was justified, because the Court had exceeded its authority in 2002, and argued that since the officers had not been tried, it was not now double jeopardy to try them.

Next Steps

19. (U) Rodriguez also told reporters that prosecutors would now start their investigation over from the beginning. He did not rule out the possibility that the officers could be charged with new crimes or that other officers could now be included in the case. Rodriguez said that the Moral Council (Attorney General, Ombudsman, Comptroller General) would consider whether to suspend, and request the National Assembly to remove, any of the justices who voted in favor of the now annulled decision, citing particularly Justice Antonio Garcia. Defense lawyers for the four officers told reporters their clients were now considering whether to present themselves to the prosecutor's office, request asylum in some embassy, or to go into hiding.

Comment

10. (C) This decision is the ultimate example of the subservience of the judicial system to political concerns. The juridically weak argument used by the Constitutional

Chamber reveal the lack of interest on the Court in saving appearances, and the political importance of the decision. The 2002 decision had not only prevented a series of trials against the military officers involved in the April events, but had challenged the Chavista narrative about what had happened on April 11, 12 and 13. We expect there will now be more prosecutions of military officers linked to the April events. The government will take advantage of the opportunity to lay out the Bolivarian historical narrative of April 2002, which will also, no doubt, feature accusations against the USG.

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